December 3, 1964, and the petitioner was sentenced to the Ohio State Penitentiary. The petitioner's conviction and judgment was appealed to the Sixth District Court of Appeals and the judgment of the trial court was affirmed on May 12, 1965.

The Supreme Court of Ohio dismissed the petitioner's appeal as of right and overruled his motion for leave to appeal on January 19, 1966.

This now is a Memorandum Opposing Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Respondent recommends that the Court accept the Statement of the Case included in the brief of the Petitioner.

QUESTIONS PRESENTED

When a person is arrested shortly after, and in the immediate vicinity of, the occurrence of an armed robbery and admits his involvement in the crime, is he deprived of rights, privileges and immunities guaranteed by the Constitution of the United States:

1. when he is subjected to immediate and pervasive police interrogation without having been first informed as to his right to refuse to answer questions or as to his right to the advice of legal counsel?

2. if, although he is permitted to call his attorney to come to the jail to counsel him, he is nevertheless subjected to such continuing questioning while his attorney is kept waiting for a long period before being permitted to see him or counsel him in private?

3. if the interrogating police officers are permitted to testify against him at his trial as to conflicting and inconsistent statements made by him during said period of questioning and at a time while he was being prevented from having private consultation with his attorney?

REASONS WHY THIS WRIT SHOULD NOT BE GRANTED

The questions presented for this Court's consideration have not been previously raised as error when the Petitioner's conviction was appealed to the Sixth District Court of Appeals of Ohio and the Supreme Court of the State of Ohio. Therefore, this Court must determine whether or not the Petitioner will be permitted to raise a new question or issue for the first time when he is appealing his conviction to the Supreme Court of the United States. It is the contention of the Respondent that this right should not be extended to the Petitioner.

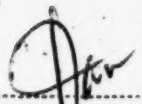
The Supreme Court of Ohio refused to entertain the objections which did not effect jurisdiction of the subject matter because they were not assigned as error in the intermediate Court of Appellate Jurisdiction.

This Court's attention is further directed to Page Nine (9) of the Petitioner's brief wherein it is admitted that the Petitioner volunteered the statement "I guess you got me," when he was faced by the police near the scene of the robbery.

It is respectfully submitted that the facts of this case do not fall within the category of the cases decided by this Court in *Miranda vs. State of Arizona* nor *Escobedo vs. State of Illinois,* and for said reasons, this writ should be denied.

Respectfully submitted,

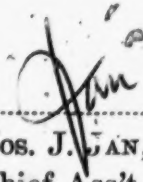
HARRY FRIBERG,
Prosecuting Attorney



JOS. J. JAN,
Chief Ass't. Prosecuting Attorney
Lucas County, Ohio

CERTIFICATION

This is to certify that a copy of the foregoing Brief of Opposing Petition for Writ of Certiorari was mailed, via U. S. Mail, this 3rd day of October, 1966, to John J. Callahan, Attorney at Law, 801 Security Building, Toledo, Ohio.



JOS. J. JAN,
Chief Ass't. Prosecuting Attorney